Supreme Court, U.S.
FILED
NOV 16 1994
OFFICE OF THE CLERK

No. 94-286

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

FREIGHTLINER CORPORATION,
Petitioner,
v.
BEN MYRICK and EMILY MYRICK,
Respondents.

NAVISTAR INTERNATIONAL TRANSPORTATION CORP.,
Petitioner,
v.
JACK LINDSEY, Executor of the Estate and Surviving Spouse of Grace C. Lindsey,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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JOINT APPENDIX

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PETITION FOR CERTIORARI FILED AUGUST 15, 1994
CERTIORARI GRANTED OCTOBER 7, 1994

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RELEVANT DOCKET ENTRIES

Date	Proceedings
3/1/91	Complaint filed in *Myrick*, Dist. Ct. #1:91-CV-0465-JOF
3/1/91	Answer to Complaint by Freightliner Corp. in *Myrick*
5/15/91	Complaint filed in *Lindsey*, Dist. Ct. #1:91-cv-1128-MHS
5/15/91	Answer to Complaint by Navistar Int'l Transp. Corp., International Harvester Co. in *Lindsey*
7/15/91	Motions for defendant Freightliner Corp. and defendant Navistar Int'l for summary judgment
9/5/91	Responses by plaintiff Myrick and plaintiff Lindsey to motions for summary judgment
9/5/91	Notice of filing videotape cassette entitled "Tractor Trailer Braking Performance 75-16-GR-7 'Com 60' 'F-001350'" by plaintiffs in support of Responses to defendants' motions for summary judgment in *Myrick* and *Lindsey*
3/26/92	ORDER in *Myrick* Granting motion for summary judgment by Freightliner Corp.
3/30/92	ORDER in *Lindsey* Granting motion for summary judgment by Navistar Int'l
4/14/92	JUDGMENT entered in *Lindsey*, Dist. Ct. #1:91-cv-1128-MHS
4/22/92	Notices of Appeal filed in *Myrick*, Ct. of App. #92-8386 and *Lindsey*, Ct. of App. #92-8387
5/22/92	JUDGMENT entered in *Myrick*, Dist. Ct. #1:91-CV-0465-JOF
6/1/92	Notice of Appeal filed in *Myrick*, Ct. of App. #92-8536
6/29/92	ORDER Granting motions to consolidate 92-8386 and 92-8387

Date	Proceedings
7/15/92	ORDER Granting motions to consolidate 92-8536 with 92-8386 and 92-8387
2/11/94	Decision of the Court of Appeals
5/18/94	ORDER Denying Rehearing and Rehearing En Banc
7/15/94	ORDER Granting Appellees' motion for further stay of the issuance of mandate
10/7/94	ORDER Granting Petition for a Writ of Certiorari

IN THE STATE COURT
OF FULTON COUNTY GEORGIA

Civil Action File No. 91VS31583B

BEN MYRICK and EMILY MYRICK,
Plaintiffs,
v.
FREUHAUF CORPORATION and
FREIGHTLINER CORPORATION,
Defendant

COMPLAINT

Plaintiffs make the following complaint against the defendants.

1.

Defendant FREUHAUF CORPORATION is a foreign corporation having a registered office in Fulton County, Georgia and a registered agent upon whom service can be perfected. This defendant is hereinafter referred to as "FREUHAUF".

2.

FREUHAUF's registered agent is CT Corporation System, Two Peachtree Street, NW, Atlanta, Georgia 30383.

3.

FREUHAUF is subject to the jurisdiction of this court.

4.

FREIGHTLINER CORPORATION is a foreign corporation having a registered office in Fulton County, Georgia. It has a registered agent upon whom service may be perfected. This defendant is hereinafter referred to as "FREIGHTLINER".

5.

FREIGHTLINER may be served by serving its registered agent, CT Corporation System, Two Peachtree Street, NW, Atlanta, GA 30383.

6.

FREIGHTLINER is subject to the jurisdiction of this court.

7.

FREUHAUF CORPORATION manufactured a certain trailer unit, VIN No. 3EKA15542. It was a 1984 pine dry van.

8.

When manufactured by this defendant, and sold as new, said van was unreasonably safe for the purposes for which it was intended, and was defective, because it was not equipped with an anti-lock braking system.

9.

Defendant FREUHAUF negligently designed and manufactured said trailer in that it failed to equip the said trailer with anti-lock brakes.

10.

Defendant FREIGHTLINER manufactured and sold as new a 1987 Freightliner Tractor, VIN No. 1FUYYRYB-6HP289872.

11.

Said tractor was defective in that it was not equipped with anti-lock brakes.

12.

Said tractor was negligently designed and manufactured in that it did not have an anti-lock braking system.

13.

On or about February 6, 1989, Jerome Edwards Bardot was driving the Freightliner tractor described above and was pulling the Freuhauf trailer described above.

14.

He was proceeding southbound on US Highway 441 in Morgan County, Georgia.

15.

At the time, the road was wet.

16.

The road in question was a two lane higway.

17.

Plaintiff BEN MYRICK was proceeding northbound on Highway 441, driving a tractor-trailer rig for Fowler Flemister Concrete, Inc.

18.

Mr. Bardot applied the brakes of the FREIGHTLINER-FREUHAUF combination tractor-trailer in order to slow down because of traffic in front of him.

19.

When Mr. Bardot applied the brakes, the brakes locked, and caused the trailer to skid into the path of the rig driven by BEN MYRICK.

20.

The FREUHAUF trailer struck the truck driven by BEN MYRICK in a violent manner.

21.

In the collision, the cab was torn off the truck driven by MR. MYRICK, and MR. MYRICK was thrown out of the cab despite the fact that he was wearing a seat belt.

22.

MR. MYRICK suffered closed head injuries, abdominal injuries and spinal injuries.

23.

MR. MYRICK is permanently paraplegic and brain damaged.

24.

MR. MYRICK has been damaged through the loss of income, through the incurring of medical expenses and has undergone pain and suffering, both physical and mental, and will continue to do so for the rest of his life.

25.

EMILY MYRICK is the wife of BEN MYRICK and has lost the companionship and consortium of her husband, BEN.

26.

BEN MYRICK is entitled to recover for his damages which he has incurred in the form of pain and suffering, medical expenses and lost earnings.

27.

EMILY MYRICK is entitled to recover for the loss of consortium of her husband, BEN.

28.

The damages sought herein are due from the defendants jointly and severally for failing to equip their respective parts of the tractor-trailer unit with anti-lock brakes.

29.

These defendants knew, or should have known, that anti-lock brakes would have prevented the loss of control of the tractor-trailer rig driven by Mr. Bardot.

30.

Nevertheless, the defendants, along with other manufactures of tractor-trailer rigs, made a conscious decision not to equip their vehicles with anti-lock brakes, despite the fact that it had been demonstrated clearly that tractor-trailer rigs equipped with anti-lock brakes would not jack-knife under the circumstances of this collision.

31.

The damages suffered by the plaintiffs are the direct and proximate result of the joint and several negligence and strict liability of these defendants.

32.

Defendants engaged in a pattern of mail and wire fraud in order to proclude the government from passing regulations requiring anti-lock brakes on tractor-trailer rigs such as the one in question.

33.

They, through their agents, engaged in lobbying activities and other political campaigns as well as combinations and restraint of trade in order to proclude the use of anti-lock brakes as a requirement on their products.

34.

Accordingly, they have jointly and severalty violated the Georgia RICO Act and are therefore liable for treble damages as a result.

WHEREFORE, plaintiffs demand judgment against the defendants, jointly and severally, in such amounts as a jury, in its enlightened conscious, may determine for the pain and suffering, medical expenses, lost earnings and lost of consortium as set forth above.

Plaintiffs further demand treble damages for the defendants' violation of the Georgia RICO Act.

Plaintiffs further demand expenses of litigation including a reasonable amount as attorney's fees as allowed by the Georgia RICO Act.

Plaintiffs further demand a trial by jury in the above-captioned case.

THE CARTER FIRM

By: /s/ James E. Carter
JAMES E. CARTER

THE CARTER FIRM
P.O. Box 509
Madison, GA 30650
404-342-4722

MATHIS, SANDS, JORDON & ADAMS

By: /s/ Charles Mathis
CHARLES MATHIS

MATHIS, SANDS, JORDON & ADAMS, P.C.
425 South Wayne Street
Milledgeville, GA 31061
912-453-9387

IN THE STATE COURT
OF FULTON COUNTY
STATE OF GEORGIA

Civil Action File No. 91VS35765-E

JACK LINDSEY, Executor of the Estate of GRACE C. LINDSEY, Deceased and JACK LINDSEY, As Surviving Spouse of GRACE C. LINDSEY, Deceased,
Plaintiffs,

v.

NAVISTAR INTERNATIONAL TRANSPORTATION CORP. and INTERNATIONAL HARVESTER COMPANY,
Defendants.

COMPLAINT

COMES NOW Plaintiff Jack Lindsey and files this his Complaint against Defendants NAVISTAR INTERNATIONAL TRANSPORTATION CORPORATION and INTERNATIONAL HARVESTER COMPANY.

1.

Defendants are corporations registered to do business in the State of Georgia. They each have as their registered agent C. T. Corporation System, 2 Peachtree Street, N.W., Atlanta, Georgia 30383, at which address service may be perfected on the defendants.

2.

Defendants are subject to the jurisdiction of this court.

3.

Defendant NAVISTAR INTERNATIONAL TRANSPORTATION CORP. is, upon information and belief, the

successor in interest to INTERNATIONAL HARVESTER COMPANY, and is liable for acts and omissions of INTERNATIONAL HARVESTER COMPANY.

4.

Upon information and belief, one or both of these defendants manufactured, designed and sold as new a certain 1982 International tractor Model CO9670, VIN 1HTL2327HCGA15401.

5.

When designed, manufactured and sold as new, said tractor was not equipped with anti-lock brakes.

6.

Failure to supply anti-lock brakes on said tractor is negligent design.

7.

Failure to supply anti-lock brakes on said tractor renders the tractor defective.

8.

On or about September 5, 1989, Tim Williams was driving said tractor while hauling a trailer in a southbound direction on U.S. Highway 441 in Oconee County, Georgia.

9.

At said time and place, GRACE C. LINDSEY was driving her vehicle in a northbound direction.

10.

The driver of the International tractor locked the brakes of the tractor-trailer rig in an attempt to stop in order to avoid another vehicle in the southbound lane.

11.

The tractor-trailer rig "jackknifed", and the tractor crossed the center line into the path of the Lindsey ve-

hicle. In the collision, GRACE C. LINDSEY sustained fatal injuries, underwent pain and suffering and died as result of said injuries.

12.

The collision, the pain and suffering, the medical expenses, the funeral expenses and death of GRACE C. LINDSEY are the direct and proximate result of the negligence of these defendants.

13.

The aforementioned injuries and expenses are the result of the defective International tractor.

14.

Plaintiff JACK LINDSEY is entitled to recover of the defendants jointly and severally the full value of the life of his deceased wife, GRACE C. LINDSEY.

15.

Plaintiff JACK LINDSEY as Executor of the Estate of GRACE C. LINDSEY is entitled to recover of the defendants jointly and severally damages for pain and suffering, medical expenses and funeral expenses of GRACE C. LINDSEY.

16.

Omitting anti-lock brakes from the tractor in question was done by the defendants with a conscious indifference to the consequences to plaintiff.

17.

As result thereof, Plaintiff JACK LINDSEY as Executor of the Estate of GRACE C. LINDSEY is entitled to recover of the defendants jointly and severally punitive damages in such amounts as may be necessary to deter the defendants from committing such acts of defective design in the future.

18.

Plaintiff's special damages, medical expenses and funeral expenses will be shown more particularly by amendment to this complaint or through discovery.

WHEREFORE, Plaintiff JACK LINDSEY as the surviving spouse of GRACE C. LINDSEY, deceased, demands judgment for the full value of the life of his deceased wife, GRACE C. LINDSEY, in such amounts as a jury may in its enlightened conscience deem appropriate.

Plaintiff JACK LINDSEY, Executor of the Will of GRACE C. LINDSEY, deceased, demands judgment against the defendants jointly and severally for the medical expenses, funeral expenses and pain and suffering of GRACE C. LINDSEY, deceased.

Plaintiff JACK LINDSEY, Executor of the Will of GRACE C. LINDSEY, demands punitive damages against the defendants jointly and severally.

Plaintiffs demand that costs of court be taxed against the defendants.

Plaintiffs further demand a trial by jury of all issues in this case.

THE CARTER FIRM

By: /s/ James E. Carter
JAMES E. CARTER
Georgia Bar #114400

Post Office Box 509
Madison, Georgia 30650
(404) 342-4722

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA, GEORGIA

Civil Action File No.: 1:91-CV-465-JOF

BEN MYRICK and EMILY MYRICK,
Plaintiffs,

v.

FREUHAUF CORPORATION and
FREIGHTLINER CORPORATION,
Defendants.

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

STATE OF OHIO
COUNTY OF LOGAN

Before the undersigned office duly authorized to administer oath personally BILLY S. PETERSON, who, having been first duly sworn, states on oath as follows:

1.

My name is BILLY S. PETERSON. I am of age and sui juris in every respect.

2.

A recent curriculum vitae is hereto attached.

3.

This affidavit is made upon by personal knowledge.

4.

By virtue of my education, training and experience, I am familiar with the standards applicable to air brake systems on trucks, known as Standard No. 121 of the Federal Motor Vehicle Safety Standards as enacted by

Congress and as administered by National Highway Traffic Safety Administration.

5.

I am also familiar with the history of Standard 121, and I am aware that at one time, following a testing program, that Standard 121 required the use of anti-lock brake systems on motor vehicles such as the one in question in this case.

6.

I am further aware that after Standard 121 was invalidated in part by *Paccer, Inc. v. National Highway Traffic Safety Administration,* 573 Fed. 2d 632. That Standard 121 was amended so as to render sections S5.3.1, S5.3.1.1, S5.3.2., S5.3.2.1, S5.3.2.2, S5.7.1, S5.7.3(a) and S5.7.3(b) inapplicable to trucks and trailers.

7.

I am also familiar with the remaining portions of Standard 121.

8.

The remaining sections of Standard 121 apply to a vehicle whether or not it is equipped with anti-lock brakes except for Section S5.1.6 which provides for a continuous anti-lock warning signal on any vehicle equipped with an anti-lock system.

9.

There are no regulations in Standard 121 which regulate of brake system which a tractor or trailer must have.

10.

Section S5.1.1, S5.1.2, S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.3, S5.1.4, S5.1.5, S5.1.7, S5.1.8, S5.2 and all of its sub-sections, S5.3.3, S5.3.3.1 and the remainder of Standard 121 apply to any tractor-trailer rig whether equipped with anti-lock brakes or not.

11.

I am familiar with the state of the art and the availability of mass-produced anti-lock brake systems for the vehicle in question.

12.

It is my opinion that prior to the time of the manufacture of the vehicle in question, the state state of the art was such that anti-lock brakes could be reliably manufactured in mass production for use in over-the-road tractors and trailers such as the vehicle in question.

13.

It is my further opinion that any tractor or trailer manufactured after 1980 without anti-lock brakes is defective and unreasonably dangerous, because a tractor-trailer rig equipped with anti-lock brakes will not jackknife, and will be controllable while stopping, even with maximum brakes applied by the driver.

Affiant further sayeth not.

/s/ Billy S. Peterson
BILLY S. PETERSON

Sworn to and subscribed before me this 3rd day of September, 1991.

/s/ Glinda S. Herron
Notary Public,
Logan County, Ohio

RESUME

Billy S. Peterson

EDUCATION:

B.S. Mechanical Engineering—1961
North Carolina State University
Raleigh, North Carolina

Additional Courses in:

Personnel Management
Industrial Management
Technical Writing
Computer Programming
Procurement Management
Several Electrical Engineering Courses

WORK HISTORY:

March 1, 1985 to Present

President
Automotive Safety Testing, Inc.
Located at TRC of Ohio
East Liberty, Ohio 43319

Technical consultant and principal investigator for Automotive Safety Testing Corporation. Areas of responsibility include: preparing safety design specifications; interpreting and analyzing Federal Safety Standards and test procedures; conducting crash, braking and other safety related tests for vehicle manufacturers and distributors.

Consultant and expert witness in automotive product liability and negligence investigations and testing, including accident reconstruction and product defects.

March 1, 1985 to Present

Private Consultant to TRC

Currently serve as private consultant to TRC as Technical Advisor on Federal Government research and other programs.

February 23, 1984 to February 28, 1985

Director, Government Affairs
TRC of Ohio
East Liberty, Ohio 43319

Responsible for all engineering and technical contact with the National Highway Traffic Safety Administration and other government agencies. Project Manager for TRC on all Federal government research and test programs, including new car assessment crash tests, compliance crash tests (frontal, rear, and side), and rollover research and development testing. Represented TRC at technical conferences and symposiums sponsored by the National Highway Traffic Safety Administration, Federal Aviation Administration, Department of Defense, and Society of Automotive Engineers.

August 1, 1976 to January 15, 1983

Chief, Project Engineering
Vehicle Research & Test Center
National Highway Traffic Safety Administration
U.S. Department of Transportation
East Liberty, Ohio 43319

Served as technical and administrative manager of all product defect investigations of automobiles, trucks, buses and other vehicles and equipment. Provided evidence for determination of product defect and possible recall by the National Highway Traffic Safety Administration.

Managed research and development crash and simulation test programs conducted at the TRC of Ohio. Acted as technical advisor during the de-

velopment and construction of the Crash Test Facility at TRC.

March 27, 1970 to July 29, 1976

Safety Standards Engineer
National Highway Traffic Safety Administration
U.S. Department of Transportation
Washington, D.C. 20590

Responsible for developing Federal Motor Vehicle Safety Standards. Direct duties included evaluating requirements, establishing criteria, analyzing comments and working with the legal staff in writing the final standards and regulations.

Conducted crash test programs to support rulemaking efforts, reporting directly to the Associate Administrator of Motor Vehicle Programs. Test programs included car and truck rollovers, side impact, rear impact, car-to-car, car-to-school bus, and moving barrier-to-car.

July 17, 1967 to March 25, 1970

Group Leader
Senior Thermal-Vacuum Engineer
Sperry Rand Space Support Division
Goddard Space Flght Center
Greenbelt, Maryland

Managed a space enviornment simulation laboratory for testing spacecraft. Directed engineers and technicians in the operation and upgrading of the facilities. Responsible for monitoring spacecraft during test through a computerized data collection system. Other duties consisted of directing engineers on special projects, reviewing reports and procedures and setting standards for operation and testing.

November 17, 1966 to July 1, 1967

Staff Engineer
Riegel Paper Corporation
Riegelwood, North Carolina

Determine instrumentation needed to computerize plant equipment.

May 1, 1965 to November 15, 1966

Aerospace Technologist (Technical Management)
Thermodynamics Branch
National Aeronautics and Space Administration (NASA)
Goodard Space Flight Center
Greenbelt, Maryland

Technical assistance to the chief of Thermodynamics Branch. Technical monitor over contractor in charge of space simulation facilities (approximately 55 on-site contract employees). Supervised ten NASA personnel during spacecraft instrumentation setup and during test monitoring.

April 1, 1963 to April 30, 1965

Aerospace Technologist (Experimental Equipment)
National Aeronautics and Space Administration (NASA)
Goddard Space Flight Center
Greenbelt, Maryland

Contract monitor working with contractor in the construction and calibration of a large space environment simulation facility.

June 15, 1961 to March 29, 1963

Project Engineer
Automotive Division
U.S. Army—Aberdeen Proving Ground
Aberdeen, Maryland

Developed and tested armor and weapon systems. Translated technical and administrative requirements into a program plan, estimated cost of program,

directed work on program, analyzed data from tests and wrote a formal report upon completion of program.

September 1956 to June 1961

Student
North Carolina State University
Raleigh, North Carolina

Break in enrollment from 6/57 to 1/58—Worked as an electrician.

March 1956 to September 1956

Electrical Technician
Riegel Paper Corporation
Riegelwood, North Carolina

Repair and maintenance of electrical controls.

March 1952 to February 1956

Electricians Mate Second Class
U.S. Navy

Repair and Maintenance of electrical controls.

PROGRAMS COMPLETED UNDER MY DIRECTION

Air Bag Testing

Passive Safety Belt Evaluation

New Car Assessment Program

Restraint Model Validation Tests

Compatibility of Belt System Comfort/Convenience with Crash Performance Requirements.

Baseline Vehicle Side Impact Testing

Rollover Procedure Development

Dynamic Testing for Improvement of Computer Simulation Models

Glazing Material Testing

Anthropomorphic Test Device Calibration Procedures

Side Impact Test Procedures

Validation of Frontal Load Cell Barrier

Evaluation of Side Impact Dummies

Side Impact Padding Integration Study

Safety Belt Retractor Study

Unrestrained Occupants Test

Automatic Transmission Inadvertant Gear Changes

Safety Belt Buckles Test

Safety Belt Failure

Fuel System Integrity Tests

Uncontrolled Acceleration

Rollbar Integrity Tests

Steering Column Crush Tests

Dual Braking System Failure Tests

Uncontrolled Steering Vibration

Motorcycle Wet Braking

Rear Axle Disengagement

Rear Axle/Differential Lockup

Idler Arm Disengagement

Carbon Monoxide Intrusion

Throttle Control Systems

Multi-Piece Wheel Disengagement

Power Brake Boosters

Hydraulic Brake systems

Master Brake cylinder Failure

Fuel Injection Systems

Wheel Stud Breakage

Carburetor Isolator Failure

Control Pedal Interferences

Trailer Axle Pin Breakage

Seatback/Seatback Latch Failures

Engine Mount Breakage

Premature Brake lockup

Steering Wheel Lockup

Tie-Rod End Disengagement

Liftgate Strut Failure

Panhard Rod Failure

Door Latch Failure

Child Safety Seats

Steering Response

PETITIONER'S

BRIEF

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OCTOBER TERM, 1994

FREIGHTLINER CORPORATION,
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BEN MYRICK and EMILY MYRICK,
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NAVISTAR INTERNATIONAL TRANSPORTATION CORP.,
Petitioner,

v.

JACK LINDSEY, Executor of the Estate and Surviving Spouse of Grace C. Lindsey,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF FOR PETITIONERS

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60 pp

QUESTION PRESENTED

Whether the National Traffic and Motor Vehicle Safety Act preempts state common-law standards that conflict with federal standards adopted pursuant to the Act for reasons of safety and practicability; or whether, as the Eleventh Circuit held, one passage in *Cipollone v. Liggett Group, Inc.*, 112 S. Ct. 2608, 2618 (1992), forecloses such preemption.

RULE 29.1 STATEMENT

Petitioner Freightliner Corporation has no subsidiaries other than wholly owned ones. Its parent corporations are Daimler-Benz North America Corporation and Daimler-Benz A.G. Petitioner Navistar International Transportation Corp. is a subsidiary of Navistar International Corporation. Navistar International Transportation Corp. owns more than 99% of Grimsby Insurance Co., Ltd., which is not publicly traded.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-286

FREIGHTLINER CORPORATION,
Petitioner,

v.

BEN MYRICK and EMILY MYRICK,
Respondents.

NAVISTAR INTERNATIONAL TRANSPORTATION CORP.,
Petitioner,

v.

JACK LINDSEY, Executor of the Estate and Surviving Spouse of Grace C. Lindsey,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-33a) is reported at 13 F.3d 1516. The opinion of the district court granting Freightliner summary judgment against the

Myrick respondents (Pet. App. 34a-42a) is reported at 795 F. Supp. 1139. The opinion of the district court granting Navistar summary judgment against respondent Lindsey (Pet. App. 46a-47a) is unreported.

JURISDICTION

The court of appeals entered judgment on February 11, 1994. Pet. App. 1a. Rehearing was denied on May 18, 1994. Pet. App. 48a-49a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. This Court granted the petition for a writ of certiorari on October 7, 1994.

STATUTORY PROVISIONS INVOLVED

The case involves the National Traffic and Motor Vehicle Safety Act of 1966. Portions of the Act, in the codification at issue in this case and as recently recodified, are set forth in an appendix to this brief.

STATEMENT

A divided court of appeals held that state common law is immune from preemption under the National Traffic and Motor Vehicle Safety Act regardless of any actual conflict (as in this case) between the common-law standard and federal law. In particular, the court ruled that ordinary conflict preemption was all but automatically ousted by the existence of federal provisions expressly addressing the scope of state authority, resting this holding on its view that one brief passage in this Court's opinion in *Cipollone v. Liggett Group, Inc.*, 112 S. Ct. 2608 (1992), altered familiar preemption analysis. Petitioners challenge the rejection of preemption in this case.

A. Federal Statutory Framework

The National Traffic and Motor Vehicle Safety Act was enacted in 1966 to provide for national safety stand-

ards for motor vehicles. The Act, as relevant here,[1] directs the Secretary of Transportation—now through his delegee, the National Highway Traffic Safety Administration (NHTSA)—to regulate motor vehicle safety by promulgating national safety standards. 15 U.S.C. § 1392. It provides that the standards "shall be practicable, shall meet the need for motor vehicle safety and shall be stated in objective terms." *Id.* § 1392(a). *See also id.* § 1392 (f)(3). It defines "motor vehicle safety" to mean protection "against unreasonable risk of accidents" and "unreasonable risk of death or injury" when accidents do occur. *Id.* § 1391(1). It gives the agency extensive authority and responsibility to conduct investigations, testing, and research to make the needed determinations of safety and practicability (*id.* §§ 1395, 1401) and requires manufacturers to inform the agency of safety-related defects (*id.* § 1411).

The statute addresses the matter of state authority in several provisions. It provides for States to play a consultative role in the agency's standard-setting process. *Id.* § 1392(f)(2). It also provides (*id.* § 1392(d)):

> Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard.

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[1] In the summer of 1994, Congress recodified the Act, as well as all of Title 49, U.S. Code, and various other statutes concerning transportation. Pub. L. No. 103-272, 108 Stat. 745. Because the pre-1994 version of the Act is at issue in this case, and because Congress made clear that the recodification was made "without substantive change" (*id.* at 745; *see id.* at 941), we use the earlier codification of the Act in this brief.

That provision is immediately followed by two specific exceptions allowing States to enforce standards on safety matters addressed by federal regulations: where the state standard is identical to the federal standard; and where vehicles used by the state government itself are involved. *Id.* § 1392(d). A subsequent provision of the Act, in a section detailing the prohibitions (and exemptions) applicable to manufacturers, adds: "Compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." 15 U.S.C. § 1397(k).

B. Standard 121: Air Brakes

Exercising its statutory responsibility, NHTSA has issued safety standards addressing numerous safety aspects of vehicle design and performance. 49 C.F.R. pt. 571. The regulation at issue in this case governs safety relating to air brake systems. 49 C.F.R. § 571.121 (Standard 121). At all times relevant to this case, the regulation has specifically provided that trucks were not to be subjected to a performance requirement that could be achieved only by, and hence in effect compels, the use of antilock brake systems (ABS) attached to the air brake systems. According to the Ninth Circuit, an "extensive," "comprehensive" administrative record compelled the conclusion that such a requirement would itself create safety problems. *Paccar, Inc. v. National Highway Traffic Safety Admin.*, 573 F.2d 632, 640, 643 (9th Cir.), *cert. denied*, 439 U.S. 862 (1978).

1. The Initial Rulemaking

The brakes on most heavy trucks are air brakes, which produce friction at the brake drum by transmitting air pressure (instead of hydraulic pressure, as in most automobiles) through hoses running to the brake chambers. "Antilock brake systems" are not a different kind of braking mechanism; rather, they are computerized devices attached to the air brake systems. These devices sense when a wheel begins to "lock up," *i.e.*, to cease rotation

and lose traction suddenly. A locked wheel causes the vehicle to skid rather than slow and, if the lock-up is not laterally symmetrical, can produce a violent swerve against the direction of the skid. The antilock device, sensing the initial stages of lock-up, momentarily releases the braking pressure on the wheel, allowing it to regain traction and avoid the skid.

Standard 121, addressed to air brakes, was developed and repeatedly revised in a comprehensive rulemaking proceeding that began in 1967. After several delays necessitated by evidence of problems in the proposed requirements, followed by revisions in the rules, the standard took effect for trucks in March 1975. The rule did not mention antilock devices by name, but rather prescribed minimum stopping distances at certain speeds, without swerving from a 12-foot lane or encountering more than momentary lock-up of any wheel. It was "beyond doubt," however, that these requirements could be met only by the installation of antilock sensing and control devices, in addition to the redesign of numerous aspects of the air-brake systems. *See Paccar*, 573 F.2d at 639 n.26; *id.* at 641 (40,000 new part numbers required).

Not only truck manufacturers, but owners, drivers, and state safety officials voiced challenges to the imposition of this standard—challenges that led NHTSA itself to continue rulemaking hearings, and make revisions, even after promulgation of the standard. *Paccar*, 573 F.2d at 637-38. As reflected in the identity of the challengers, the concern was not limited to issues of cost but rather focused on the safety and practicability of such devices as used on heavier vehicles. Strong evidence showed that, in the case of heavy vehicles, the additions and modifications required by the standard, when coupled with antilock devices, caused more dangers than they cured, thereby creating new dangers not previously present.[2] Among

[2] *Paccar*, 573 F.2d at 637 ("In early 1974, the agency began to receive continual complaints to the effect that antilock devices were unreliable, and rendered vehicles dangerously unsafe when com-

other problems, the sensing function of the antilock devices encountered a high level of unexplained failures, leading to increased possibilities of accidents related to wheel lock-ups. The devices were also difficult to maintain, and the computer was susceptible to electromagnetic interference from various sources, including radio and radar, reportedly causing the ABS to cease functioning suddenly and unpredictably or, in the extreme, disabling application of the foundation brakes themselves, with highly dangerous consequences. *Id.* at 637-38, 641. NHTSA itself acknowledged some of these problems. *Id.* at 638.

2. *The Ninth Circuit Ruling*

Paccar, a truck manufacturer, joined by the American Trucking Association and the Truck Body and Equipment Association, challenged Standard 121 in the Ninth Circuit. Their most vehement criticism was that "it is not a 'reasonable' standard, since the failure of what they consider an unreliable device, the antilock, in a panic braking situation creates a potentially more dangerous situation than a 'prestandard' vehicle because of the new, stronger braking system." *Paccar*, 573 F.2d at 639. The Ninth Circuit agreed.

The court held first that in spite of "NHTSA['s] deni[al] that antilock is required by the Standard, extensive testimony and evidence from the industry, unrebutted [by] agency evidence, convinces us, as a practical matter and beyond doubt, that antilock was necessary to meet the Standard." *Id.* at 639 n.26. On this premise, the court held that "NHTSA has the responsibility to assure that the new systems it requires are reliable when placed in use" (*id.* at 642) and that

> the comprehensive data before us indicate that there is a strong probability that the performance of a

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bined with new, more effective brakes.") (footnote, quoting comments to agency, omitted).

> substantial number of vehicles whose braking systems have been altered to include "overpowered" front axles and antilock devices has created a potentially more hazardous highway situation than existed before the Standard became operative. Therefore, until such time as NHTSA develops evidence that the new braking systems required by the Standard do not create the possibility of greater danger to the public, those parts of the Standard requiring heavier axles and the antilock device should be suspended.

Id. at 643. In short, the agency had acted unlawfully in failing to draw the only permissible conclusion from the extensive evidence in the record: a requirement of antilock devices for trucks itself produced safety problems and could not be justified.

The government sought certiorari from the decision, arguing that the *Paccar* court had impermissibly substituted its judgment for that of the agency. 78-95 Pet. 2, 14-23. Paccar responded that the Ninth Circuit was correct in concluding that the record, far from supporting the imposition of the Standard, contained overwhelming evidence that implementation of the Standard would pose increased hazards to truckers and the public—in other words, that what the agency had done was not only unwarranted, but positively dangerous. Paccar appended numerous documents from users, drivers and their union, the California State Highway Patrol, and the Mass Transit Administration of the Maryland Department of Transportation detailing the hazards entailed by the Standard. 78-95 Br. in Opp. This Court denied certiorari. 439 U.S. 862 (1978).

3. *The Agency Response*

The agency's response to the Ninth Circuit holding was, notably, *not* to attempt to supplement its record to support reintroduction of the antilock requirement. Rather, NHTSA simply added a specific statement that antilock-brake and related requirements were not applica-

ble to trucks and trailers. *See* 44 Fed. Reg. 46849 (1979); 44 Fed. Reg. 53166 (1979); 44 Fed. Reg. 57100 (1979).[3] The agency left in place the performance criteria for those manufacturers who chose to install antilock brakes. *See* 44 Fed. Reg. 46849 (1979). Trucks were then and are now subject to many safety standards for their air brake systems; but the regulations have at all times relevant to this case contained the explicit provision—based directly on the Ninth Circuit's holding as to the safety conclusion compelled by the comprehensive agency record—declaring installation of antilock brakes not to be required. Standard 121 § S3 (regulations requiring antilock brakes "are not applicable to trucks and trailers").

NHTSA's conduct after its post-*Paccar* amendment to Standard 121 confirmed that the problem with the antilock requirement was not merely one of inadequate *evidentiary* support in the record but a substantive problem, the real danger produced by requiring installation on all trucks. Thus, NHTSA did not for years undertake to use any of its extensive research, testing, and investigatory powers (15 U.S.C. §§ 1395, 1401) to develop a record to resolve the safety concerns shown in *Paccar*. Not until the mid-to-late 1980s, after development of a new generation of antilock devices in Europe, did NHTSA begin to study the issue again.[4] *See* NHTSA, *Heavy Truck Safety Study* 92 (DOT HS 807 109, March 1987) ("With the availability of second generation antilock systems, the recent advances in microprocessor technology, and greater acceptance of electronic controls on trucks

[3] NHTSA specifically advised owners of trucks equipped with antilock devices that, while it would not require them to disconnect or remove such devices, if they wished to do so they should consult with the manufacturers and carefully follow their instructions for safe de-activation. 44 Fed. Reg. 9783, 9784 (1979).

[4] Congress acted to require study of the question as well. 49 U.S.C. App. § 2521 Notes (1988 and 1991 statutes).

in the U.S., it appears to be an opportune time to reconsider the issue of antilock use in this country."). As late as 1991 and 1992, NHTSA's technical studies acknowledged the "reports of brake systems failures that were attributed to the ABS" and the "operational and maintenance problems experienced during the [Standard] 121 period," and it stated that "[t]he reliability of these systems remains to be established conclusively."[5]

In 1990, NHTSA announced its intention to consider reinstatement of the antilock-brake requirement, based on the technological advances. *See* 55 Fed. Reg. 44738 (1990). In June 1992, the agency issued an advance notice of proposed rulemaking to achieve that result. *See* 57 Fed. Reg. 24212 (1992). Although indicating repeatedly that action is forthcoming,[6] the agency has not yet issued a final rule establishing an antilock requirement to take effect by a specified date.

C. This Litigation

This case involves two separate but materially identical tort actions. Respondent Ben Myrick was injured in a collision with a tractor-trailer in Georgia. He and his wife, respondent Emily Myrick, brought an action in a Georgia state court against Freightliner, the manufacturer of the tractor.[7] Respondent Jack Lindsey's wife was

[5] NHTSA, *Improved Brake Systems for Commercial Motor Vehicles* [1991 NHTSA Report] § 3, p. 3-15 (DOT HS 807 706, April 1991); NHTSA, *An In-Service Evaluation of the Reliability, Maintainability and Durability of Antilock Braking Systems (ABS) for Heavy Truck Tractors* § 1, p. 1-16 (DOT HS 807 846, March 1992); 1991 NHTSA Report, *supra*, at ES-4.

[6] 49 C.F.R. pt. 571, Docket No. 92-29—Notice 1, 57 Fed. Reg. 24212 (1992); Notice 2, 58 Fed. Reg. 50738 (1993); Notice 3, 58 Fed. Reg. 65156 (1993); Notice 4, 59 Fed. Reg. 17326 (1994).

[7] The suit also named Freuhauf Corporation, a trailer manufacturer, but the case against Freuhauf was dismissed with prejudice by agreement. Pet. App. 3a n.1. Freuhauf is no longer a party to this case.

killed in a collision with a tractor-trailer. As executor and surviving spouse, Lindsey then brought a state-court action against Navistar, whose corporate predecessor had manufactured the tractor. Both suits were removed to federal court in Georgia based on diversity jurisdiction. 28 U.S.C. §§ 1332, 1441. *See* J.A. 3-12 (complaints).

Both actions alleged liability under Georgia law, based entirely on the lack of antilock brakes. In the court of appeals' words, the Myricks "alleg[ed] that the absence of anti-lock brakes was a negligent design and rendered the tractor defective." Pet. App. 3a (footnote omitted). Similarly, Lindsey "alleged that Navistar's failure to supply anti-lock brakes was a negligent design which rendered the tractor defective and unsafe." *Id.* at 3a-4a. *See also* J.A. 13-15 (respondents' affidavit in opposing summary judgment).

Petitioners moved for summary judgment in each case on the ground that, since the federal regulation on braking systems rejects a requirement of antilock brakes (based on safety considerations), the Safety Act preempts respondents' tort law claims alleging that the absence of such brakes is a defective design. The district court in each case agreed. In the *Myrick* case, Judge Forrester concluded:

> Not only would a common law standard requiring the installation of anti-lock devices conflict with the federal standard, it would defeat the policy behind the Safety Act by imposing a design requirement that the Department of Transportation judges to be unsafe, having chosen not to require such devices until they are more reliable.

Pet. App. 41a. In the *Lindsey* case, Judge Shoob adopted Judge Forrester's reasoning as "persuasive." Pet. App. 47a.

D. The Court of Appeals Decision

The court of appeals, in a 2-1 decision, reversed. Pet. App. 1a-33a. The court agreed that conflict preemption,

if available, would apply here, just as it applied in *Taylor v. General Motors Corp.*, 875 F.2d 816 (11th Cir. 1989), *cert. denied*, 494 U.S. 1065 (1990), which found conflict preemption of a common-law tort action for failure to install a safety device (there, airbags) that the federal regulations on the subject specifically said was not required. Pet. App. 2a. *See id.* at 10a ("In both cases, the claims were premised on a failure of the manufacturers to install specific safety devices in their vehicles, and in both cases a safety standard established under the Act effectively gave the manufacturers the option of not installing the device."). The court concluded, however, that conflict preemption was no longer available, and *Taylor* must be overruled, in light of this Court's decision in *Cipollone*. *Id.* at 2a, 11a.

The majority rested its conclusion on one passage from *Cipollone* (112 S. Ct. at 2618), which it read as adding "a new wrinkle to the fabric of pre-emption law by holding that where a federal statute contains an express pre-emption clause, and that clause 'provides a "reliable indicium of congressional intent with respect to state authority," ' a court should not consider implied theories of pre-emption." Pet. App. 9a-10a; *see also id.* at 14a ("we hold today: where, as here, there is an express pre-emption provision, which constitutes a reliable indicium of congressional intent, implied pre-emption analysis has no place"). The court found that principle applicable to the Safety Act, explaining that the existence of an express preemption provision all but automatically ousts conflict preemption: "the reliable indicium requirement is not much of a hurdle." *Id.* at 18a. Accordingly, the only proper inquiry was the scope of the "express preemption" provisions. *Id.* at 10a-11a, 19a-20a.

With respect to the text of the Safety Act, then, the panel did not dispute that the preemption provision of the Act (Section 1392(d)), read by itself, would preclude state common-law standards differing from federal

regulatory standards.[8] The court concluded, however, that because of the "savings clause" in a separate provision of the Safety Act, 15 U.S.C. § 1397(k), a different result was required. That provision, the court held, preserved common law claims against preemption even if, as here, they would conflict with a federal determination and thus be invalid under traditional conflict-preemption principles. Pet. App. 24a; *see also id.* at 20a-22a.

Judge Hill dissented, explaining (Pet. App. 33a (footnote omitted)):

> [T]he effect of a prevailing claim of common law negligence for failure to equip the trucks with antilock brakes would be the same as if the State of Georgia enacted a statute saying that a manufacturer cannot sell for use in Georgia any truck without antilock brakes. As noted above, Standard 121 expressly permits manufacturers to install airbrake systems on trucks and trailers. If the Supremacy Clause means anything, it must mean that federal law prevails in this conflict.

The Eleventh Circuit subsequently denied rehearing (Pet. App. 48a-49a), but it stayed the issuance of the mandate to permit Freightliner and Navistar to file a petition for certiorari (*id.* at 50a-51a). This Court granted the petition on October 7, 1994.

SUMMARY OF ARGUMENT

The Eleventh Circuit held that the state common law of torts, even when it conflicts with federal law in the ordinary conflict-preemption sense, is nonetheless immune from preemption under the Safety Act. The court based

[8] This Court recently made precisely this point with respect to a preemption provision that, without specific mention of "common law," covered any state "law, rule, regulation, order, or standard relating to railroad safety." 45 U.S.C. § 434. The Court said: "Legal duties imposed on railroads by the common law fall within the scope of these broad phrases." *CSX Transp., Inc. v. Easterwood*, 113 S. Ct. 1732, 1737 (1993) (citing to *Cipollone*).

that ruling, first, on a novel view of the law of preemption and, second, on a novel reading of the Safety Act. Both aspects of the Eleventh Circuit's ruling are incorrect.

I. The court first erred in concluding that an express preemption provision in a statute presumptively, indeed all but automatically, eliminates conflict preemption. It makes no sense, practical or constitutional, to attribute to Congress the intent to grant blanket authority to States to defeat Congress's own substantive regulatory policies simply because it has addressed itself to the subject of state authority and specified one area in which federal law is to be exclusive. Indeed, the well-settled and repeatedly reaffirmed precedent of this Court is directly to the contrary: even a sweeping savings clause, in which Congress explicitly seeks to preserve state authority, is read *not* to authorize state-law measures that would be invalid under ordinary conflict preemption analysis. *See, e.g., Morales v. Trans World Airlines, Inc.*, 112 S. Ct. 2031, 2037 (1992); *Texas & Pacific Ry. v. Abilene Cotton Oil Co.*, 204 U.S. 426, 446 (1907). If conflict preemption survives the existence of a broad antipreemption clause absent clear congressional statement, it surely survives the existence of a preemption clause.

Cipollone did not, in one brief passage (112 S. Ct. at 2618), overturn this established and common-sense result. Nothing in the passage indicates that a preemption provision is ordinarily a "reliable indicium" of congressional intent to authorize state law that conflicts with federal law. Indeed, the passage plainly addresses only implied *field* preemption, rather than conflict preemption, saying that the outer limits of affirmative congressional intent to displace state authority ordinarily must be found in the express statutory provision addressed to that issue —which was the "familiar" point made in the two decisions the Court relied on. *Ibid.* (quoting *Malone v. White Motor Corp.*, 435 U.S. 497, 505 (1978), and *California Federal Savings & Loan Assn. v. Guerra*, 479

U.S. 272, 282 (1987)). That point, however, does not apply to conflict preemption, which does not depend on any affirmative congressional intent to displace state authority, but only on valid federal regulatory policy and the direct operation of the Supremacy Clause. The Eleventh Circuit's contrary reading of *Cipollone*, moreover, not only requires the surprising result that the Court meant to revolutionize preemption law without saying so, but is incompatible with the contemporaneous views of Justices who joined the *Cipollone* opinion (*see Gade v. National Solid Wastes Management Ass'n*, 112 S. Ct. 2374, 2383 (1992) (O'Connor, J., joined by Rehnquist, C.J., White, J., and Scalia, J.)) as well as with the Court's decisions both immediately before *Cipollone* (*see Morales, supra*) and after *Cipollone* (*see CSX Transp., Inc. v. Easterwood*, 113 S. Ct. 1732 (1993); *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 114 S. Ct. 517 (1993)).

II. The Eleventh Circuit, having misunderstood *Cipollone* and its effect on preemption law, also misconstrued the Safety Act. That Act does not achieve the extraordinary, if not unprecedented, result of authorizing state-law defeat of substantive federal regulatory determinations. That is enough for conflict preemption in this case, but in fact the Act goes further: state-law claims inconsistent with federal determinations under the Safety Act are expressly preempted.

The preemption provision, Section 1392(d), preempts state-law "safety standards." As this Court's decisions in *Cipollone* and *CSX v. Easterwood* make unmistakably clear, that language readily encompasses state tort-law product-safety standards, whether established by the common law or by statute (here both). Any other reading, moreover, would fly in the face of the purpose of the preemption provision: to produce a uniform standard where NHTSA acts. Tort-law requirements enforced through damages actions can powerfully defeat the policy

of uniformity. *See Cipollone*, 112 S. Ct. at 2620; *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959). Standing by itself, then, Section 1392(d) preempts state tort-law claims like those brought by respondents.

In any event, whatever the meaning of Section 1392(d), the Eleventh Circuit's ouster of conflict preemption would require that Section 1397(k), the "savings clause," be read to preserve state common law that conflicts with federal standards. The provision cannot properly be so read. Its language declaring that "compliance" with federal standards is not a basis for an "exempt[ion]" from common-law duties does not speak to the situation where state-law duties are invalidated by, because they would defeat, federal law. Certainly the language offers no more ground for eliminating conflict preemption—and thus declaring States free to use their common law to undermine federal law—than did the sweeping antipreemption language found insufficient for that purpose in *Morales, Abilene Cotton*, and similar cases. Indeed, the Eleventh Circuit's blinkered view of Section 1397(k) would produce a senseless distinction between tort law codified in state statutes, as is now common, and tort law declared only in "common law."

Finally, neither the legislative history of the Safety Act nor established precedent supplies what the statutory text does not: a congressional authorization for States to use their common law to defeat federal standards. The pertinent congressional statements suggest, at most, a preservation of state common-law standards that in appropriate cases go beyond, rather than conflict with, federal standards. And that construction is, in fact, the long-expressed view of the courts on the subject. In particular, prior to the Eleventh Circuit decision in this case, the federal courts of appeals had uniformly held that the Safety Act does not oust conflict preemption, a position endorsed by the Solicitor General and accepted by Con-

gress in legislation enacted in 1991. This Court should reestablish that position as the governing law by reversing the Eleventh Circuit judgment in this case.

ARGUMENT

To prevail on their claims, respondents must obtain a determination under Georgia law that it was unreasonable in and of itself for petitioners not to have installed antilock brakes on their trucks when they were built in the 1980s.[9] Standard 121, however, embodies a determination under federal law—one, indeed, that was *mandated* by the comprehensive agency record, as the Ninth Circuit held in *Paccar*—that the omission of antilock brakes from trucks is *not* unreasonable, but that, to the contrary, *requiring* such brakes would itself present an unreasonable risk to safety, in contravention of the Safety Act. The requested state-law determination and the established federal-law determination are thus unavoidably in conflict. And if the federal law prevails, as it would under ordinary conflict-preemption principles, Georgia law may not declare petitioners' conduct in this respect negligent or their trucks defective as a basis for liability.

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[9] Respondents' claims allege negligence under the common law and "strict liability" under a Georgia statute, O.C.G.A. § 51-1-11. The two claims, however, amount to the same thing: the strict-liability standard does not impose liability "merely because a product may be dangerous" but, rather, like the negligence standard, requires proof that it was unreasonable for petitioners to omit antilock brake systems from their trucks. *See, e.g., Center Chemical Co. v. Parzini*, 218 S.E.2d 580, 581-82 (Ga. Ct. App. 1975); *Hunt v. Harley-Davidson Motor Co.*, 248 S.E.2d 15, 16-17 (Ga. Ct. App. 1978) ("reasonable care"). *See also Coast Catamaran Corp. v. Mann*, 321 S.E.2d 353, 357 (Ga. Ct. App. 1984), *aff'd*, 326 S.E.2d 436 (Ga. 1985) ("only semantics distinguishes the cause of action for negligence and a cause of action pursuant to OCGA § 51-1-11"); *Orkin Exterminating Co. v. Dawn Food Products*, 366 S.E.2d 792, 793-94 (Ga. Ct. App. 1988). Thus, the district courts and the Eleventh Circuit properly recognized that respondents have essentially one claim.

The Eleventh Circuit, like the district courts (Pet. App. 41a, 47a), accepted all of this. Indeed, the Eleventh Circuit agreed that the pertinent federal law deliberately afforded truck manufacturers an option to install or to omit antilock brake systems and that respondents' claims in these cases conflicted with that federal law by imposing a Georgia-law requirement that such brakes must be installed. Pet. App. 10a ("the claims [are] premised on a failure of the manufacturers to install specific safety devices in their vehicles, and . . . a safety standard established under the Act effectively [gives] the manufacturers the option of not installing the device"). Accordingly, the Eleventh Circuit (along with the district courts) did not doubt that respondents' claims are preempted *if* conflict preemption is available.

The Eleventh Circuit nevertheless held, based entirely on a brief passage in *Cipollone*, that conflict preemption was precluded by the presence of provisions in the Safety Act addressed to the scope of state authority. That holding is incorrect as an interpretation of the law of preemption and of *Cipollone*. It is also incorrect as an interpretation of the Safety Act, which, properly read, expressly preempts the state-law requirements invoked here by respondents.

I. EXPRESS PROVISIONS ON PREEMPTION DO NOT, OF THEIR OWN FORCE OR PRESUMPTIVELY, ELIMINATE CONFLICT PREEMPTION BEYOND THEIR EXPRESS TERMS.

The Eleventh Circuit's ruling fundamentally confuses two distinct sources of federal invalidation of state law. Conflict preemption follows from substantive federal regulatory action, "by direct operation of the Supremacy Clause" (*Brown v. Hotel & Restaurant Employees & Bartenders Int'l Union*, 468 U.S. 491, 501 (1984)). Where state law conflicts with the federal policy, the state law is invalid, and no express or implied congres-

sional intent with respect to *state authority* is required. Express and implied field preemption, by contrast, are found when a statute, expressly or implicitly, addresses the issue of state authority and prescribes an area in which States are forbidden to act. Both explicit and implicit field preemption rest on discerned congressional intent to displace state authority altogether and attain exclusive federal authority in a defined area; once that definition is applied, there is no occasion for an independent inquiry (typically no occasion for inquiry at all) into whether a particular state action would contradict or serve to supplement substantive federal regulatory policy. *See, e.g., Wisconsin Dep't of Ind., Labor & Hum. Rel'ns v. Gould Inc.*, 475 U.S. 282 (1986) (labor); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739 (1985) (ERISA).

This Court summarized the standard categories of preemption analysis in *Wisconsin Pub. Intervenor v. Mortier*, 111 S. Ct. 2476 (1991). There are two forms of "field" preemption: "Congress' intent to supplant state authority in a particular field may be expressed in the terms of the statute"; or "Congress' intent to supersede state law in a given area may nonetheless be implicit" in a statutory scheme (if it is sufficiently pervasive, dominantly federal, or obviously demanding of uniformity). *Id.* at 2481-82. Conflict preemption, by contrast, stands quite apart from any congressional intent to displace state authority: "Even when Congress has not chosen to occupy a particular field, pre-emption may occur to the extent that state and federal law actually conflict"—because state law either makes compliance with federal law a " 'physical impossibility' " or stands as an " 'obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " *Id.* at 2482 (quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963); *Hines v. Davidowitz*, 312 U.S. 52 (1941)). Although conflict preemption is of course grounded in congressional intent, the relevant intent is the intent defining the sub-

stance of the federal regulatory policy, not an intent to displace and preempt state authority. *See also, e.g., English v. General Elec. Co.*, 496 U.S. 72, 78-79 (1990); *Michigan Canners & Freezers Ass'n v. Agricultural Mktg. & Bargaining Bd.*, 467 U.S. 461, 469 (1984).[10]

There is simply no sound reason why the presence of an express preemption provision should foreclose, even presumptively, attention to actual conflicts between a federal substantive regulatory provision and conflicting state regulation. Indeed, the Court's precedents are exactly to the contrary, requiring clear statement before a statutory reference to state authority will be construed to authorize impairment of substantive federal policy. *Cipollone* did not alter that precedent or sensible principle.

A. Conflict Preemption, Based on Federal Regulatory Action, Is Not Ousted, Absent Clear Statement, by Express Provisions Addressing State Authority.

The Eleventh Circuit's ruling that an express preemption provision all but automatically ousts conflict preemption can be restated in more familiar, concrete terms: once Congress addresses the scope of state authority in a specific preemption provision, it is to be *presumed* to be licensing States to defeat federal law to whatever extent the preemption provision does not itself preclude the state action.[11] That extraordinary proposition is unreasonable

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[10] These principles apply equally to any properly authorized federal law (all of which is covered by the Supremacy Clause), including agency action. *See, e.g., City of New York v. FCC*, 486 U.S. 57, 63-64 (1988); *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 368 (1986). Of course, an agency rule that is the only legally permissible choice on a full record has at least as much regulatory force, defining the substance of federal law for preemption and other purposes, as a rule adopted by an agency as a matter of discretion.

[11] The Eleventh Circuit stated that its principle depended on the preemption provision being a "reliable indicium" of congressional intent, but it declared that condition "not much of a hurdle." Pet. App. 18a. Under the Eleventh Circuit's decision, then, the ouster

on its face. For example, if a federal statute required a warning label on a product and then, in a separate preemption provision, declared simply that no State shall require any additional warning, the Eleventh Circuit's ruling would presumptively permit a State to *prohibit* the federally mandated warning—notwithstanding the bald conflict with the substantive federal warning requirement.[12] That approach makes no sense as an operative rule for construing presumed congressional intent. To the contrary, it would produce the topsy-turvy consequence that Congress could often produce a greater degree of protection of federal policy by omitting a preemption provision than by including one.

As a practical matter, the Eleventh Circuit's presumption makes no sense even as a "default rule" about what Congress intends. For one thing, when Congress writes a preemption provision to wall off a defined field from state action, it is necessarily focused on the need for uniformity under federal authority in the area. It is not only unwarranted but positively perverse to presume that Congress, by the very act of insisting not just on primacy but on exclusivity of federal authority in that area, is actually licensing defeat of federal authority in other areas. Moreover, the task that the Eleventh Circuit would impose on Congress is surely an unrealistic one: whenever Congress considers addressing *any* aspect of the scope of state authority in a statute, it would be obliged (because presumed) to survey all possible state actions that might have an impact on the federal program and attempt compre-

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of conflict preemption is certainly presumptive; indeed, it is all but automatic.

[12] This would have been the result in *Cipollone* itself, at least under the 1965 statute at issue, which required a warning on the cigarette package and barred States from requiring any other warning on the package (or in advertising). 112 S. Ct. at 2616. Yet it is absurd to suppose that Congress was licensing States to override the federal command to adopt that warning label. (The same result might follow under the 1969 (and current) statute.)

hensively to deal with that universe of potential impairments, on pain of being understood by the courts to have authorized any state action that it omitted from its preemption provision. Congress cannot reasonably be saddled with the impossible task of foreseeing all possible future state action that might frustrate the policies embodied in the federal statute, or the policies validly adopted in administrative proceedings conducted pursuant to authority delegated under a statute.[13]

A presumption directly contrary to that adopted by the Eleventh Circuit not only accords with common sense but is grounded in the Constitution: Congress must be assumed *not* to intend to allow state law to defeat federal policy. This principle, in fact, is nothing more than the natural corollary of the "assumption that Congress did not intend to displace state law." *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981). "This assumption provides assurance that 'the federal-state balance,' *United States v. Bass*, 404 U.S. 336, 349 (1971), will not be disturbed unintentionally by Congress or unnecessarily by the courts." *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). If the constitutional assumption is that Congress does not displace States in *their* proper sphere, the equally strong and complementary constitutional assumption, based directly on the Supremacy Clause, is that States are not permitted to displace federal action in *its* proper sphere. This assumption, too, "provides assurance that 'the federal-state balance' . . . will not be disturbed unintentionally by Congress or unnecessarily by the courts." *Ibid.*

Indeed, this rule reflects—whereas the Eleventh Circuit's rule turns upside down—the traditional relation of

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[13] Congress might avoid the burden, of course, by including in every statute a provision stating that inconsistent state law is preempted. But it is senseless to impose on Congress the duty to restate the Supremacy Clause in every statute. And even the Eleventh Circuit, which thought that *Cipollone* announced a *new* principle of preemption law, could not attribute any awareness of such a duty to prior Congresses.

express preemption and conflict preemption. Conflict preemption follows directly from the constitutional command of the Supremacy Clause that valid federal laws directly regulating some activity pursuant to an Article I grant of power prevail over contrary state laws; and this form of federal supremacy has been established since the earliest days of constitutional law. *See, e.g., McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824). It is express preemption—the ouster of state authority to act even when not inconsistent with directly applicable federal substantive law—that is more of a latecomer to our constitutional jurisprudence and makes a greater claim of congressional authority under the Constitution: it requires reliance on the necessary and proper clause to allow Congress to go beyond direct regulation of the object of its Article I powers and to displace even consistent state law that would not be invalid by virtue of the Supremacy Clause alone. It would accordingly be perverse to accord such primacy to express preemption as to find in the very enactment of a provision seeking to displace some aspect of state authority a reason for inferring a broad congressional abrogation of the command of the Supremacy Clause.

Not surprisingly, the established precedent of this Court is squarely contrary to the principle announced by the Eleventh Circuit. Thus, this Court has often indicated that conflict preemption may be considered in addition to express preemption. *See, e.g., Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142-43 (1990); *Jones v. Rath Packing Co.*, 430 U.S. 519, 540-43 (1977); *Northwest Cent. Pipeline Corp. v. Kansas Corp. Comm'n*, 489 U.S. 493, 509-22 (1989). Indeed, the Eleventh Circuit effectively acknowledged that this was the established law before *Cipollone*. Pet. App. 5a-11a.

Most pointedly, it has long been clear that when Congress addresses the question of state authority through a broadly worded savings clause, it is *not*, absent clear statement, to be inferred that Congress has allowed States to contradict its regulatory policies. The Third Circuit explained in an airbags case under the Safety Act (*Pokorny v. Ford Motor Co.*, 902 F.2d 1116, 1125, *cert. denied*, 498 U.S. 853 (1990)): "it is well-established that a savings clause like § 1397(k) does not 'save' common law actions that would subvert a federal statutory or regulatory scheme." *See International Paper Co. v. Ouellette*, 479 U.S. 481, 492-94 (1987); *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 328-31 (1981); *Pennsylvania R.R. v. Puritan Coal Mining Co.*, 237 U.S. 121, 129 (1915); *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U.S. 426, 446 (1907). At least twice in recent years, this Court has reconfirmed this rule for construing even the broadest provisions addressing the scope of state authority: a clear statement is required before such provisions are read to authorize state laws in conflict with federal law. *See Morales v. Trans World Airlines, Inc.*, 112 S. Ct. 2031, 2037 (1992); *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 114 S. Ct. 517, 526 (1993).

If a broad savings clause that *explicitly* and sweepingly preserves state authority will not ordinarily be read to oust conflict preemption and thus does not preserve conflicting state laws, the same principle applies *a fortiori* to an affirmative preemption provision. After all, such a preemption provision at best speaks to preserving state law only by negative implication—in the Eleventh Circuit's view, by implication preserving all that is not included in the express provision. The long-established application of conflict preemption to state laws even when they are within the terms of an express *anti*preemption clause necessarily means that the existence of an express preemption provision does not, absent clear statement, eliminate conflict preemption.[14]

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[14] *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984), which respondents have relied on (Br. in Opp. 17 n.7), does not stand for a different rule. The preemption at issue there was a form of

B. *Cipollone* Did Not Alter This Fundamental Principle.

The Eleventh Circuit did not question that the foregoing was the well-established law prior to 1992. It held, however, that *Cipollone* radically altered preemption law, and changed these fundamental, common-sense principles, when the Court said:

> When Congress has considered the issue of pre-emption and has included in the enacted legislation a provision explicitly addressing that issue, and when that provision provides a "reliable indicium of congressional intent with respect to state authority," *Malone v. White Motor Corp.*, 435 U.S. [497, 505 (1978)], "there is no need to infer congressional intent to pre-empt state laws from the substantive provisions" of the legislation. *California Federal Savings & Loan Assn. v. Guerra*, 479 U.S. 272, 282 (1987) (opinion of Marshall, J.). Such reasoning is a variant of the familiar principle of *expressio unius est exclusio alterius*: Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not preempted.

112 S. Ct. at 2618. The Eleventh Circuit's reading of this passage cannot be right.

To begin with, the passage by its terms states a precondition to any restriction on implied preemption: the

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field preemption: the state-law safety duty invoked did not conflict with any substantive federal duty (*id.* at 257); thus, the sole issue was whether state authority was improperly trenching on an area within which federal *authority* was exclusive. In that context, the Court indicated a reluctance to infer that Congress had eliminated state-law remedies "for those injured by *illegal* conduct." *Id.* at 251 (emphasis added). But in cases of conflict preemption, as here, federal law *invalidates* the standard of conduct that defines the alleged "illegality," leaving the plaintiff with a complaint seeking recovery for conduct that is not tortious. In our legal system, it is the *imposition* of liability for non-tortious conduct, not its displacement, that would be extraordinary.

express preemption provision must be a " 'reliable indicium' " of Congress's intent on the issue of "state authority." The *Cipollone* passage says nothing about when that precondition is satisfied. Of course, to sustain the Eleventh Circuit's extraordinary conclusion, the needed congressional intent would have to reach the full range of possible state authority, including state action that undermines federal policy. But nothing in *Cipollone* says that a preemption provision provides even presumptively a reliable indicium of congressional intent to allow state law to defeat federal objectives. The contrary presumption is far more plausible, as the D.C. Circuit recently explained: "Where a state statute actually frustrates the purpose of Congress, we do not believe that the specific preemption clauses in a statute alone provide a 'reliable indicium of congressional intent with respect to state authority.' " *Jackson v. Culinary School of Washington, Ltd.*, 27 F.3d 573, 581 n.12 (D.C. Cir. 1994) (quoting *Cipollone*).

It is, in any event, plain on the face of the passage quoted from *Cipollone*, with its reference to " 'intent with respect to state authority,' " that what the Court was discussing was the relationship between express and implied *field* preemption, not conflict preemption. The Court was doing no more than indicating the rarity with which congressional intent to preclude States from acting in an entire area of regulation may be found *implicit* in a statute that contains a more limited express provision addressing that very question. That is why the Court could say that the principle it was articulating was a "familiar" one. The *expressio unius* principle that the Court said it was applying does, of course, restrict the freedom to find an implied congressional intent on an issue—the general displacement of state authority in an area of law—in the face of an explicit (and limited) congressional statement on that very issue. But that interpretive principle has little to say, as a logical matter, about the relationship between a congressional statement of

preemptive intent (displacing general state lawmaking authority in an area) and preemption based on *regulatory* intent, which follows directly from the Supremacy Clause's mandate regarding the primacy of substantive federal regulatory policy (without separate proof of congressional intent to displace state authority).

The two precedents cited by the Court confirm that the passage in *Cipollone* addressed only the relationship between express and implied *field* preemption. *Malone v. White Motor Corp.*, 435 U.S. 497 (1978), involved only a question of field preemption: whether a state law regulating certain pension plans was preempted by the exclusive federal authority over collective bargaining under the National Labor Relations Act. There was no claim of state-law conflict with any substantive federal regulation. Similarly, the passage from *California Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 282 (1987), that the Court quoted in *Cipollone* is addressed to an express (anti)preemption provision that by its terms is about field preemption. 479 U.S. at 282 (quoting 42 U.S.C. § 2000h-4 ("Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field . . . .")). And the Court in *Guerra* held that there was in fact no conflict between the state and federal policies at issue. *Id.* at 284-91. The Court in *Cipollone* thus relied on these authorities for the only proposition they established: that implied *field* preemption is disfavored in the presence of an express provision addressing the field of permissible state authority.

Indeed, the *Cipollone* passage could not possibly have been speaking to the separate issue of conflict preemption. The Court had no occasion to consider any conflicts with substantive federal policy, because none of the claims that the Court found to be outside the scope of the express preemption provision presented such a conflict. The duties to abide by warranties and not to commit

deception, which survived express preemption, did not conflict with any federal policy. And while the asserted state-law duty to provide additional warnings, over and above the federally mandated warnings, raised an issue of conflict—on the theory that additional state-mandated warnings would have impaired Congress's determination that the simple and clear federally mandated warnings were most effective—that issue was removed from the case by the Court's holding that the failure-to-warn claims were preempted under the express preemption provision. 112 S. Ct. at 2621-25. In short, there was no conflict-preemption issue left in the case after the express-preemption issue was decided.

Even aside from what *Cipollone* said and what the case involved, there are compelling reasons to reject the Eleventh Circuit's view that the passage quoted above revolutionized preemption law. For one thing, nothing in the *Cipollone* passage hints that it is repudiating clear and repeatedly relied-on preemption principles. To the contrary, the Court said that it was following a "familiar" principle. Moreover, three Justices who were necessary to form a majority for this portion of the opinion (Chief Justice Rehnquist and Justices White and O'Connor) only one week earlier had specifically taken the very approach that the Eleventh Circuit found forbidden by *Cipollone*, concluding that a statute containing an express preemption provision "impliedly pre-empted" state law that was "in conflict with the full purposes and objectives" of the federal statute. *Gade v. National Solid Wastes Management Ass'n*, 112 S. Ct. 2374, 2383 (1992) (O'Connor, J., joined by Rehnquist, C.J., White, J., and Scalia, J.). It cannot sensibly be assumed that these Justices meant in *Cipollone* to reject their own approach from the week before.

Finally, the Eleventh Circuit's reading of *Cipollone* is at odds with contemporaneous and subsequent decisions of the Court. Three weeks before *Cipollone* was

decided, the Court followed the established *Abilene Cotton* approach to savings clauses—strongly presuming continued applicability of conflict preemption—in *Morales v. Trans World Airlines, Inc.*, 112 S. Ct. 2031, 2037 (1992). The Term after *Cipollone* was decided, the Court made clear in *CSX v. Easterwood* that the "plain wording" of a preemption clause was to be looked to "in the first instance" (113 S. Ct. at 1737), but not exclusively, and it entertained a "claim of implied 'conflict' preemption" on the merits, rejecting it *not* by declaring conflict preemption unavailable with a citation to *Cipollone*, but by referring to its substantive analysis of the federal policies on the subject. *Id.* at 1742 n.12.[15] Similarly, last Term, in *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 114 S. Ct. 517 (1993), the Court reaffirmed the applicability of traditional "conflict" preemption analysis under ERISA, which contains a broad express preemption provision and a broad savings clause (for insurance laws), holding that the savings clause does *not* save state laws that would violate the Supremacy Clause under ordinary conflict preemption principles. "[W]e discern no solid basis for believing that Congress, when it designed ERISA, intended fundamentally to alter traditional preemption analysis. State law governing insurance generally is not displaced, but 'where [that] law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress,' federal preemption occurs." *Id.* at 526.

In sum, the Eleventh Circuit misread *Cipollone* and mistakenly held that the presence of express preemption provisions in a statute readily eliminates conflict preemption analysis.

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[15] Conflict preemption could not exist, of course, where there was no federal determination on the specific subject—as the Court found in rejecting express preemption for certain grade-crossing claims. 113 S. Ct. at 1736-38, 1742.

II. THE SAFETY ACT EXPRESSLY PREEMPTS, RATHER THAN SAVES, STATE TORT STANDARDS THAT CONFLICT WITH FEDERAL LAW.

Because Congress may authorize state-law impairment of federal policies, it is necessary to examine whether—as the Eleventh Circuit believed—Congress did so in the Safety Act. Whatever difficulties there are in defining the outer limits of preemption under Sections 1392(d) and 1397(k), straightforward analysis of those provisions makes clear that they do *not* preserve state-law obligations that would fall under conflict preemption. Indeed, state claims such as the courts below held to be involved here are plainly defeated as a matter of express preemption; they come within Section 1392(d)'s preemptive reach and are not saved by Section 1397(k).

At the outset we note that it might be possible to read the relevant provisions, in light of the statute's strong commitment to uniformity of standards once NHTSA has addressed a topic, as expressly preempting *any* state-law claim on a matter addressed by a federal safety standard where the state-law standard "is not identical to the Federal standard" (§ 1392(d)). In that view, the Act preempts even state common-law standards that go further than, rather than contradict, federal standards.[16] We did not make such an argument below, however, and we need not make it here: this case involves the clearer situation of a contradiction between a federal determination and respondents' state-law claims, and all the courts below so treated it. The Eleventh Circuit judgment should be

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[16] Section 1397(k) would, under this reading of the Act, perform the function of *confirming* what might be inferred from Section 1392(d) itself: that manufacturers who comply with all federal standards are not, for that reason, to be excused from residual, background state common-law liability in respect to matters the agency does not address. That is, the provision would explicitly establish the absence of any implied field preemption broader than the express field preemption laid down in Section 1392(d).

reversed on the ground that state-law claims in conflict with federal law are preempted.

A. Section 1392(d), an Express Preemption Provision, Covers State Tort-Law Standards.

The provision in the Safety Act specifically commanding preemption, Section 1392(d), readily covers common-law tort duties like those respondents seek to impose here. The critical term, "standard," is, of course, the normal term referring to the common-law duties imposed by tort law.[17] And this Court in *Cipollone*, construing the phrase "requirements or prohibitions," and in *CSX v. Easterwood*, construing the phrase "law, rule, regulation, order, or standard," readily concluded that common-law duties "fall within the scope of these broad phrases." *CSX*, 113 S. Ct. at 1737 (citing *Cipollone*, 112 S. Ct. at 2620). Where the common-law standards address product safety, then, they are "safety standards" in ordinary, accepted usage. *Asahi Metal Indus. Co. v. Superior Ct.*, 480 U.S. 102, 114-15 (1987). The language of Section 1392(d), broadly preempting state safety standards on matters addressed by a federal motor vehicle safety standard, thus readily encompasses legal duties imposed under state tort law.[18]

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[17] *See, e.g.*, W. Keeton, D. Dobbs, R. Keeton, D. Owen, *Prosser & Keeton on the Law of Torts* §§ 30, 75, 99 (5th ed. 1984); Restatement (Second) of Torts § 282 (1965); *Ingersoll-Rand Co. v. McClendon*, 498 U.S. at 142; *Silkwood*, 464 U.S. at 250-51, 256; *id.* at 264-65 (Blackmun, J., dissenting); *Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co.*, 376 U.S. 315, 322-23 (1964); *New York Times Co. v. Sullivan*, 376 U.S. 254, 267 (1964). *See also Ream Tool Co. v. Newton*, 433 S.E.2d 67, 71 (Ga. Ct. App. 1993), *cert. denied*, 1993 Ga. Lexis 967 (Oct. 12, 1993); *Dupree v. Keller Indus., Inc.*, 404 S.E.2d 291, 293-95 (Ga. Ct. App. 1991), *cert. denied*, 1991 Ga. Lexis 698 (May 15, 1991); *Honda Motor Co. v. Kimbrel*, 376 S.E.2d 379, 383-84 (Ga. Ct. App. 1988).

[18] The statutory definition of "motor vehicle safety standards" as being "minimum standard[s]" (15 U.S.C. § 1391(2)) means only that manufacturers are free to exceed them, not that States are free to go beyond them. Otherwise, the bar on States' adoption of any standard except an "identical" standard (§ 1392(d)) would be nonsense.

Respondents have suggested that Section 1392(d) must exclude common-law duties because it initially uses "standard" to refer to NHTSA's administrative standards and because it preempts standards of a "State or political subdivision." Br. in Opp. 17-18. These suggestions are illogical. NHTSA adopts administrative standards under the Act because those are the only kind, by definition, that an administrative agency can adopt; use of the term standard to *include* NHTSA's measures no more *excludes* state common-law standards from the term than it excludes state legislative enactments.[19] And the phrase "State or political subdivision" includes the judicial organs of state government, just as did the term "State" in *CSX v. Easterwood*.[20] The language of Section 1392(d) is calculated to embrace all state authorities. Its evident aim of asserting exclusive federal authority forecloses any narrower reading.

Moreover, by its terms, Section 1392 applies "whenever a Federal motor vehicle safety standard . . . is in effect" and the state law at issue addresses "the same aspect of performance" as that addressed by the federal standard. The preemption clause does not apply only

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[19] Indeed, in *CSX v. Easterwood*, the Secretary of Transportation was given authority to "prescribe, as necessary, appropriate rules, regulations, orders, and standards" for railroad safety (45 U.S.C. § 431(a)), and the Court held that imposition of a common-law duty came within the comparable phrase of the preemption provision, "law, rule, regulation, order, or standard" (45 U.S.C. § 434). 113 S. Ct. at 1736-37. The terms of the preemption provision were not deprived of their normal plain meaning because essentially identical terms were used in defining the Secretary's authority, which necessarily was limited to issuing administrative standards.

[20] *See New York Times Co. v. Sullivan*, 376 U.S. at 265 ("The test is not the form in which state power has been applied but, whatever the form, whether such power has in fact been exercised."); *Ex parte Virginia*, 100 U.S. 339, 347 (1880) ("A State acts by its legislative, its executive, or its judicial authorities."); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 624 (1991) (jury is "quintessential governmental body").

"to the extent" that a federal safety standard imposes specific affirmative "obligations" on specific types of vehicles or devices, while excluding from its reach those determinations expressed in terms of exceptions built into a safety standard.[21] Rather, a federal safety standard embodying a federal determination on an aspect of performance is covered by the preemption clause in both its affirmative obligations and its limitations and exceptions to those obligations insofar as together, by inclusion and exclusion, they express the full contours of the determination regarding vehicle safety. It is an accepted principle that a deliberate policy-based agency *failure* to regulate may have preemptive force: "The Court has previously recognized that 'where failure of . . . federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved pursuant to the policy of the statute,' States are not permitted to use their policy power to enact such a regulation." *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 178 (1978) (quoting *Bethlehem Steel Co. v. New York State Labor Relations Bd.*, 330 U.S. 767, 774 (1947)). Giving full operative force to exceptions adopted on the merits and expressly set forth in the regulation is the natural construction by virtue of that principle.

The policy of Section 1392(d) confirms the meaning of the text. The exclusion of common-law standards from

[21] The contrary view would doubly violate the text. First, this view would replace the word "whenever" with the phrase "to the extent that"—in direct contravention of this Court's holding in *John Hancock* that, as a matter of unambiguous meaning, a statute applying "to the extent that" a particular circumstance is present does *not* mean the same thing as a statute applying "if" the circumstance is present. 114 S. Ct. at 531 (rejecting United States's argument). Second, this view would replace the term "standard" with the narrower term "obligation": "standard" necessarily refers both to where the obligations apply and where they do not apply, as long as that defined scope itself reflects a judgment on the merits.

the preemptive scope of the Act would be inconsistent with the preemption clause's purpose, obvious both on its face and from the legislative history. Congress envisioned that, once the federal agency rulemaking produced a judgment about a particular safety matter, the standards would be controlling nationwide. The national character of the motor vehicle industry made uniformity a practical necessity[22]; and the broad investigatory authority and obligations of NHTSA made it fair and practical to repose this preemptive authority in the agency.[23] This commitment to uniform criteria that would guide manufacturers, based on an expert federal agency's rulemaking, naturally embraces common-law liability on matters addressed by federal standards: it has long been recognized that such liability is designed to affect and does affect defendants' conduct (*Cipollone*, 112 S. Ct. at 2620, quoting *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959)). If permitted in all the 50 States, such liability would be "fundamentally at odds with the goal of uniformity" embodied in the preemption provision (*Ingersoll-Rand*, 498 U.S. at 142). *See also International Paper v. Ouellette*, 479 U.S. at 496.[24]

[22] H.R. Rep. No. 1776, 89th Cong., 2d Sess. 17 (1966) (The Act was "intended to result in uniformity of standards so that the public as well as industry will be guided by one set of criteria rather than by a multiplicity of diverse standards."); S. Rep. No. 1301, 89th Cong., 2d Sess. 12 (1966) ("The centralized, mass production, high volume character of the motor vehicle manufacturing industry in the United States requires that motor vehicle safety standards be not only strong and adequately enforced, but that they be uniform throughout the country.")

[23] S. Rep. No. 1301, *supra*, at 9, 11; H.R. Rep. No. 1776, *supra*, at 21.

[24] There is one separate reference to "common law" in the congressional reports' discussion of *the preemption provision*, and it does not suggest exclusion of common-law standards from that provision. The Senate Report, after stressing the need for uniformity, notes that States may set more stringent standards for their own procurements and then explains: "Moreover, the Federal minimum safety standards need not be interpreted as restricting

Accordingly, if Section 1392(d) stood alone, this case would immediately be at an end. The preemption of common-law claims that address an aspect of performance addressed by a federal safety standard—as the Eleventh Circuit recognized respondents' claim does with respect to Standard 121—is clear on the face of Section 1392(d). And the language could not have a more restrictive meaning without undermining the expressed purpose of uniform regulation behind Congress's enactment of the language. The Eleventh Circuit's apparent ruling that Section 1392(d) does not embrace common-law duties is incorrect.

B. Section 1397(k) Does Not Save State Tort Standards that Conflict with Federal Law.

Section 1392(d), of course, does not stand alone in the Safety Act. Section 1397(k), too, has a direct bearing on the scope of state authority in the area. Whatever the full affirmative reach of Section 1397(k), however, it is clear that the provision *cannot* properly be construed to save state tort standards, like those in this case, that

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State common law *standards* of care. Compliance with such standards would thus not necessarily shield any person from product liability at common law." S. Rep. No. 1301, *supra*, at 12 (emphasis added). The use of the term "standard" in referring both to the federal standards and to common-law duties confirms the natural meaning of "standard" in Section 1392(d) as including common-law standards; so too does the very fact that the committee undertook to offer an explanation on the point.

Beyond that, the meaning of the explanation is less clear. The committee might be referring to the federal standards collectively and disclaiming preemption of the whole field of common-law duties, whether or not a specific federal standard addresses the matter at issue in a particular suit. Or, the committee might be referring to individual standards, in which case it is declaring that ouster of common-law duties depends on how particular standards are judicially "interpreted," so that compliance does not automatically constitute (is "not necessarily") a defense to common-law liability. In either event, the Safety Act would not save common-law standards that are in conflict with federal standards.

are inconsistent with federal standards. That conclusion leaves conflict preemption in full force, whether or not Section 1392(d) is read expressly to preempt common-law safety standards. If Section 1392(d) *is* so read, express preemption exists as well.

1. Nothing in the language of Section 1397(k) refers to tort duties that conflict with federal standards. To the contrary, in declaring that "compliance" with any federal standard does not "exempt" a manufacturer from any common-law liability, the provision says only that the mere fact of compliance with federal standards, by itself, does not grant a privilege of not answering to common-law standards. Conflict preemption of a state-law duty that contradicts a federal policy, however, is not readily described as granting an "exempt[ion]" based on "compliance" with a federal standard. Rather, the state-law standard is rendered invalid by its inconsistency with federal law. The language of Section 1397(k) thus does not support the extraordinary result of congressional preservation of state-law liability based on standards inconsistent with federal policies.

Moreover, regardless of how broadly it is read, the language of Section 1397(k) cannot be viewed as more preservative of inconsistent state law than the sweeping savings clauses that have been held, at least since *Abilene Cotton*, to be *in*sufficient to oust conflict preemption.[25] For example, in the Court's recent decision in *Morales*, the statute at issue contained no less sweeping "savings" language: "Nothing contained in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter

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[25] The savings clause at issue in *Abilene Cotton* provided: "Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies." 204 U.S. at 446 ("the act cannot be held to destroy itself"). *See also Puritan Coal Mining, supra; Kalo Brick, supra.*

are in addition to such remedies." 49 U.S.C. App. § 1506 (1992). Yet the Court squarely held that such language did not authorize state actions that would defeat the policies of uniformity and deregulation embodied in the rest of the statute. 112 S. Ct. at 2037. "As in *International Paper Co. v. Ouellette*, 479 U.S. [at 494], 'we do not believe Congress intended to undermine this carefully drawn statute through a general saving clause.'" *Id.* *See also John Hancock, supra; Puritan Coal Mining*, 237 U.S. at 129 ("That proviso was added at the end of the statute, not to nullify other parts of the act, or to defeat rights or remedies given by preceding sections, but to preserve all existing rights which were not inconsistent with those created by the statute."). There is no basis for a different conclusion here.[26]

The text and the background rule of construction against which Congress enacted the Safety Act, in short, make clear that Congress did not intend the surprising, and surely rare (if not unprecedented), result that States would be licensed to defeat federal regulatory standards.[27] The good sense of this presumption is well illustrated by the consequences of accepting the Eleventh Circuit's contrary view of Section 1397(k): all specific design stand-

[26] The Court in *Morales* also observed that the general savings provision was not written with specific reference to the preemption provision: it predated enactment of the preemption provision. In this case, too, the savings provision, Section 1397(k), though enacted contemporaneously, is written with no specific reference to the preemption provision, which appears five sections earlier in the Act. In any event, the *Abilene Cotton* principle relied on by *Morales* stands independently of the additional ground cited by the Court in *Morales*. Indeed, it is at least as absurd to presume that a single Congress meant to defeat its own substantive objectives as to presume that one Congress meant its preemptive intent to be defeated by an earlier Congress's statutory savings provision.

[27] As noted above, *Silkwood* is not precedent for such a law because the case involved no conflict of state and federal regulatory standards. *See* note 14, *supra*. *See also Goodyear Atomic Corp. v. Miller*, 486 U.S. 174 (1988).

ards, all federally approved options, and all determinations that a particular requirement would be affirmatively *dangerous* would have no preemptive effect on tort suits. Manufacturers could be held liable under state law even for doing precisely what the federal regulations *required* them to do.

This assertedly "literal" reading of Section 1397(k) would produce a senseless result in another way as well. Because the provision refers only to "common law," it would not on this hypothesis preserve damages actions based on statutory causes of action—such as the strict liability cause of action in this very case. *See* note 9, *supra*. With the proliferation of codifications of tort standards, a wooden "literal" reading of Section 1397(k) would conform to no plausible congressional policy.

Even respondents may have come to agree that Section 1397(k) does not, after all, save all common-law, or tort, actions. In their brief in opposition to certiorari, they appeared to acknowledge that the provision may not preserve state claims in cases of "direct, irreconcilable conflict." Br. in Opp. 16, 23. Once that concession is made, however, the supposed "plain meaning" reading of Section 1397(k) as ousting conflict preemption, and preserving all tort liability, collapses.[28]

[28] As to state tort standards that add to, without contradicting, federal standards on a subject, several aspects of the text of Section 1397(k) lend support to the notion that the provision was not withdrawing *any* of the preemption provided for in Section 1392(d): the provision's placement five sections after the preemption provision (*cf. CSX v. Easterwood*, 113 S. Ct. at 1738), in a section of the statute addressed to prohibitions on manufacturers and exemptions; its omission of any reference to the preemption provision; and its use of "compliance" language—suggesting contemplation of a "compliance with administrative regulations" tort defense (*see* Restatement (Second) of Torts § 288C (1965))—rather than the ordinary language of savings provisions, such as those found in Section 1392(d) itself ("Nothing in this section shall be construed . . ."), in *John Hancock* (similar), in *Morales* (quoted in text above), or in *Guerra* (similar). The

2. The legislative history cannot supply the needed support for an inference of congressional authorization of state-law defeat of federal policy: the history simply does not show that Congress meant to authorize the imposition of tort liability based on state standards that conflict with federal standards. To begin with, the Senate bill did not include Section 1397(k). The Senate Report's discussion of the preemption provision, moreover, does not state any intent to license States to impose common-law liability based on standards incompatible with federal standards. To the contrary, it is naturally read to call for a standard-specific inquiry that "interpret[s]" the federal standard to determine its compatibility with the asserted state standard. *See* note 24, *supra*.

The House added Section 1397(k)—enacted as Section 108(c) of the 1966 Act and originally codified at 15 U.S.C. § 1397(c). The House Report stated that "compliance with safety standards is not to be a defense or otherwise to affect the rights of parties under common law particularly those relating to warranty, contract, and tort liability." H.R. Rep. No. 1776, *supra*, at 24. At most, however, the committee's statement indicates an intent that state common law would be permitted to establish standards higher than, but not inconsistent with, federal standards. The passage could, in fact, be read as reaching no further than to deny that mere compliance with all NHTSA standards automatically would defeat

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early cases arising under the Safety Act (*see* notes 31-33, *infra*) indicate why Congress, having strongly declared a need for uniform national standards to be developed by an expert administrative agency, might have emphasized that, *until* there were such standards on a particular subject, the non-uniform, judicially developed standards of the tort system would continue in force. It is unclear how Section 1397(k)'s language disclaiming an "exempt[ion]" based on "compliance" with "any" standard, interpreted in this way, would differ from a disclaimer of preemption of liability based on state standards that merely go beyond an applicable federal safety standard.

comon-law duties, without speaking to whether common-law duties are preserved or displaced when they address a safety matter addressed by a specific federal standard.[29]

Although Section 1397(k) was added by the House to the legislation as proposed by the Senate, and then retained by the conference committee, the provision received no mention in the Conference Report. It is not discussed in the portion of the report on the preemption provision (H.R. Conf. Rep. No. 1919, 89th Cong., 2d Sess. 16 (1966)), and it is not mentioned in the portion describing the section on exemptions in which the provision appears (*id.* at 18). That omission is powerful evidence that the provision was not intended to undo a significant part of what the preemption provision did, much less to take the unusual step of authorizing state-law defeat of federal policy.

3. This reading of Section 1397(k) is confirmed by lower court precedent and congressional action. Prior to the Eleventh Circuit decision in this case, the law was clear and settled (even in the Eleventh Circuit) that Section 1397(k) did *not* mean that conflict preemption was unavailable to preempt common-law claims. Not a single one of the numerous decisions relied on by respondents as rejecting preemption (Br. in Opp. 11-12) involved a state-law claim that *conflicted* with a federal safety standard or held that such claims were preserved by Section 1397(k). Indeed, it is striking that only two or three of respondents' decisions appear squarely to *hold*

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[29] This latter interpretation is affirmatively suggested by the congressional testimony that respondents quote as stating "[t]he reason for the House of Representatives to add" Section 1397(k): "'[i]f the Government assumes the responsibility of safety design in our vehicles,'" manufacturers will defend against suits by asserting, "'Our product meets Government standards.'" Br. in Opp. 20.

Representative Dingell referred to the preservation of common-law remedies as part of his argument against an amendment to add criminal penalties. His comments say nothing about the merits of the common-law actions or, in particular, whether they would be defeated by the applicability of a specific federal safety standard or by a conflicting federal standard. 112 Cong. Rec. 19,663 (1966).

that there is no preemption of a state standard that goes beyond a specifically applicable federal safety standard (and no decision contains anything resembling a full consideration of the issue).[30] All of the rest involved pronouncements merely rejecting a broad "compliance" (field-preemption) defense, unrelated to any specific federal standard[31]; or, despite broader pronouncements, involved no indication that a specific federal standard in fact applied to the case[32]; or were not tort suits at all or otherwise presented no challenge to liability by a tort defendant.[33] None of respondents' precedents supports preservation of *inconsistent* state standards.

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[30] *Shipp v. General Motors Corp.*, 750 F.2d 418, 421 (5th Cir. 1985); *Turner v. General Motors Corp.*, 514 S.W.2d 497 (Tex. Civ. App. 1974); *cf. Buccery v. General Motors Corp.*, 132 Cal. Rptr. 605 (Cal. Ct. App. 1976). In *Turner*, moreover, the argument that the court discusses appears to be only a field-preemption argument, although a federal standard seems to have been applicable. 514 S.W.2d at 505-06. In *Buccery*, the court proceeds on the assumption that no federal standard actually addressed the safety issue for the vehicles in question. 132 Cal. Rptr. at 609.

[31] *See Dorsey v. Honda Motor Co.*, 655 F.2d 650 (5th Cir. 1981), *cert. denied*, 459 U.S. 880 (1982); *Dawson v. Chrysler Corp.*, 630 F.2d 950 (3d Cir. 1980), *cert. denied*, 450 U.S. 959 (1981); *Larsen v. General Motors Corp.*, 391 F.2d 495 (8th Cir. 1968); *Knippen v. Ford Motor Co.*, 546 F.2d 993 (D.C. Cir. 1976); *McMullen v. Volkswagen of America*, 545 P.2d 117 (Ore. 1976); *Arbet v. Gussarson*, 225 N.W.2d 431 (Wis. 1975); *Volkswagen of America, Inc. v. Young*, 321 A.2d 737 (Md. App. 1974).

[32] *Stonehocker v. General Motors Corp.*, 587 F.2d 151 (4th Cir. 1978); *Sours v. General Motors Corp.*, 717 F.2d 1511 (6th Cir. 1983); *Schwartz v. American Honda Motor Co.*, 710 F.2d 378 (7th Cir. 1983); *General Motors Corp. v. Edwards*, 482 So. 2d 1176 (Ala. 1985); *Roberts v. May*, 583 P.2d 305 (Colo. App. 1978); *Fox v. Ford Motor Co.*, 575 F.2d 774 (10th Cir. 1978).

[33] *United States v. General Motors Corp.*, 518 F.2d 420 (D.C. Cir. 1975); *Chrysler v. DOT*, 472 F.2d 659 (6th Cir. 1972); *Lollie v. General Motors Corp.*, 407 So. 2d 613 (Fla. App. 1981), *petition denied*, 413 So. 2d 876 (Fla. 1982); *H.P. Hood & Sons, Inc. v. Ford Motor Co.*, 345 N.E.2d 683 (Mass. 1976). In *Jackson v. Spagnola*, 503 A.2d 944 (Pa. Super. 1986), the only issue presented was the *plaintiff*'s objection to admission of compliance evidence.

In contrast, the First Circuit in *Wood v. General Motors Corp.*, 865 F.2d 395 (1988), *cert. denied*, 494 U.S. 1065 (1990), held that Section 1397(k) did not prevent a finding of conflict preemption as to state common law. The *Wood* decision was followed by the Tenth Circuit in *Kitts v. General Motors Corp.*, 875 F.2d 787 (1989), *cert. denied*, 494 U.S. 1065 (1990). The Third Circuit reached the same conclusion in *Pokorny v. Ford Motor Co.*, 902 F.2d 1116, *cert. denied*, 498 U.S. 853 (1990), explaining in particular that "a savings clause like § 1397 (k) does not 'save' common law actions that would subvert a federal statutory or regulatory scheme." *Id.* at 1125. And the Eleventh Circuit in *Taylor v. General Motors Corp.*, 875 F.2d 816 (1989), *cert. denied*, 494 U.S. 1065 (1990), so held as well. This uniform precedent that Section 1397(k) does not foreclose conflict preemption, moreover, was endorsed to this Court by the Solicitor General in a brief for the United States (signed as well by NHTSA) in *Wood*, supporting conflict preemption as to the tort law there at issue and explaining that "Section 108(c) [Section 1397(k)] does not preserve all design defect claims." 89-46 Br. for the United States 11.

The construction of Section 1397(k) was thus well settled by 1991. In that year, Congress enacted legislation directing NHTSA to require airbags in all new motor vehicles in the near future. 15 U.S.C. § 1392 Note (Pub. L. No. 102-240, § 2508(d), 105 Stat. 2086). Congress was apprised of the unbroken *Wood* line of cases holding common-law liability for failure to install airbags to be preempted. *See* H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 403 (1991) (referring to NHTSA letter). Yet, in enacting the legislation, Congress specifically indicated that it did "not want by this section to change the law on liability as it existed prior to enactment." *Ibid.*

In sum, the "savings clause" does not override the clear command of the preemption provision as it applies to state-law duties inconsistent with federal law. The text of Section 1397(k), the established rule of construction

in this context, the legislative history, and the clear precedent and subsequent congressional acceptance—these make it impossible to read Section 1397(k) as supplying the necessary evidence of congressional intent to permit defeat of federal policy. Thus, the Safety Act does not negate conflict preemption. Rather, applying Section 1392(d), the Act expressly preempts conflicting state-law tort duties.

* * * *

The Ninth Circuit in *Paccar* explicitly held that the imposition of a standard requiring ABS for heavy trucks is unwarranted and dangerous. NHTSA accordingly exempted trucks from such a requirement. Recognizing that the combination of *Paccar* and NHTSA's present regulation represent a federal determination that trucks are exempt from any such requirement and that the application of Georgia law here is in direct conflict with that federal determination, the Eleventh Circuit nonetheless allowed Georgia to impose this requirement. The court did so because of its misunderstanding of general principles of preemption law and this Court's decision in *Cipollone*. The Eleventh Circuit was wrong, and its judgment that there is indeed a conflict here should have led it to affirm the district courts' dismissals of these actions.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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Dated: November 16, 1994

STATUTORY APPENDIX

STATUTORY APPENDIX

Prior to its recent recodification, the National Traffic and Motor Vehicle Safety Act provided in pertinent part:

15 U.S.C. § 1391

As used in this subchapter—

(1) "Motor vehicle safety" means the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against unreasonable risk of accidents occurring as a result of the design, construction or performance of motor vehicles and is also protected against unreasonable risk of death or injury to persons in the event accidents do occur, and includes nonoperational safety of such vehicles.

(2) "Motor vehicle safety standards" means a minimum standard for motor vehicle performance, or motor vehicle equipment performance, which is practicable, which meets the need for motor vehicle safety and which provides objective criteria.

15 U.S.C. § 1392

(a) The Secretary shall establish by order appropriate Federal motor vehicle safety standards. Each such Federal motor vehicle safety standard shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms.

* * * *

(c) Each order establishing a Federal motor vehicle safety standard shall specify the date such standard is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(d) Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Nothing in this section shall be construed as preventing any State from enforcing any safety standard which is identical to a Federal safety standard. Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

(e) The Secretary may by order amend or revoke any Federal motor vehicle safety standard established under this section. Such order shall specify the date on which such amendment or revocation is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date the order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(f) In prescribing standards under this section, the Secretary shall—

(1) consider relevant available motor vehicle safety data, including the results of research, development, testing and evaluation activities conducted pursuant to this chapter;

(2) consult with the Vehicle Equipment Safety Commission, and such other State or interstate agencies (including legislative committees) as he deems appropriate;

(3) consider whether any such proposed standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed; and

(4) consider the extent to which such standards will contribute to carrying out the purposes of this chapter.

* * * *

15 U.S.C. § 1397.

(k) Compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law.

On July 5, 1994, Congress recodified the Act, together with various other transportation statutes and all of Title 49, U.S. Code, "without substantive change." Pub. L. No. 103.272, 108 Stat. 745, 941. The new Code provisions in relevant part, are as follows:

49 U.S.C. § 30102. Definitions

(a) GENERAL DEFINITIONS.—In this chapter—

(8) "motor vehicle safety" means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.

(9) "motor vehicle safety standard" means a minimum standard for motor vehicle or motor vehicle equipment performance.

49 U.S.C. § 30103. Relationship to other laws

* * * *

(b) PREEMPTION.—(1) When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. However, the United States Government, a State, or a political subdivision of a State may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the otherwise applicable standard under this chapter.

(2) A State may enforce a standard that is identical to a standard prescribed under this chapter.

* * * *

(e) COMMON LAW LIABILITY.—Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.

* * * *

49 U.S.C. § 30111. Standards

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe motor vehicle safety standards. Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

(b) CONSIDERATIONS AND CONSULTATION.—When prescribing a motor vehicle safety standard under this chapter, the Secretary shall—

(1) consider relevant available motor vehicle safety information;

(2) consult with the agency established under the Act of August 20, 1958 (Public Law 85-684, 72 Stat. 635), and other appropriate State or interstate authorities (including legislative committees);

(3) consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed; and

(4) consider the extent to which the standard will carry out section 30101 of this title.